

The complaint

Mr O is unhappy with the redress offered by Black Horse Limited trading as Land Rover Financial Services (LRFS) after they accepted that a car supplied to him under a hire purchase agreement was of an unsatisfactory quality.

What happened

In August 2022 Mr O was supplied with a used car through a hire purchase agreement with (LRFS). He paid a deposit of £6,250 and the agreement was for £57,981 over 49 months; with 48 monthly payments of £652.39 and a final payment of £21,067. At the time of supply the car was around two years old and had done 14,300 miles.

The agreement also included a maximum permitted mileage allowance. This was 38,800 including the 14,300 miles the car had already done. The agreement stated that Mr O would pay 14 pence for every mile he exceeded the mileage allowance.

Mr O complained about a number of faults with the car. These included an issue with the Diesel Particulate Filter (DPF) and the Exhaust Gas Recirculation (EGR) – these were repaired under the warranty. He also complained about issues with the infotainment screen, and a clunking noise due to an issue with the gearbox.

LRFS accepted that the car they supplied to Mr O wasn't of a satisfactory quality. They agreed to collect the car, end the hire purchase agreement, and pay £11,484 to Mr O. They said the amount included a refund of the payments he'd made towards the agreement, including the deposit he paid, plus 8% statutory interest on these payments. They said they'd charged Mr O for his usage of the car.

They said they'd charged him 45pence for each mile he'd driven in the car. This totalled £4,053 as he'd done 9,006 miles. They'd deducted this amount from the total refund they had offered.

Mr O was unhappy with this response, specifically the usage charge applied by LRFS. He was also unhappy that they didn't refund the £700 he paid for GAP insurance. So, he referred his complaint to our service for investigation.

Our investigator said that LRFS should refund the deposit, and refund the total amount he'd paid, minus an amount to reflect fair usage. She suggested that the fair usage amount should be based on the excess mileage fee set out in the agreement. She confirmed that the GAP premium had been refunded as it was included in the total amount of credit.

LRFS disagreed. They said that 45 pence per mile was the industry normal for fair use.

Because LRFS didn't agree, this matter has been passed to me to make a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable

in the circumstances of this complaint.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. Where evidence has been incomplete or contradictory, I've reached my view on the balance of probabilities – what I think is most likely to have happened given the available evidence and wider circumstances.

In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and (if appropriate) what I consider was good industry practice at the time. Mr O was supplied with a car under a hire purchase agreement. This is a regulated consumer credit agreement which means we are able to investigate complaints about it.

The Consumer Rights Act 2015 (CRA) covers agreements such as the one Mr O entered into. Under this agreement, there is an implied term that the goods supplied will be of satisfactory quality. The CRA says the quality of the goods includes their general state and condition, as well as other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability.

So, if I thought the car was faulty when Mr O took possession of it, or that the car wasn't sufficiently durable, and this made the car not of a satisfactory quality, it'd be fair and reasonable to ask LRFS to put this right.

Other Decisions

LRFS has made reference to other decisions the Financial Ombudsman Service has made. A crucial part of our service and the way we consider complaints is that we consider each complaint on its own merits and its own individual circumstances. So, my decision won't be impacted in any way by any decision made on a different complaint, no matter how similar LRFS feels the situation is.

Undisputed Fault

In this case, there is no dispute there was a problem with the car supplied to Mr O, nor that these faults were present when the car was supplied to him. As such, I'm satisfied that I don't need to consider the merits of this issue within my decision. Instead, I'll focus on what I think LRFS should do to put things right.

Redress

The issue I have to consider is whether or not Mr O should make a further payment towards that fair usage; and if so, how much should that be.

The hire purchase agreement Mr O entered into was a Personal Contract Purchase. The industry body, The Finance and Leasing Association (FLA), of which LRFS is a member, gives a helpful summary of what a PCP is.

It says that the main difference between a PCP agreement and a hire purchase agreement is that the value of the car at the end of the contract period is calculated at the start of the agreement, and this value is deferred. It says the deferred sum is usually referred to as the Guaranteed Minimum Future Value (GMFV).

It explains how the GMFV is based on a number of factors including how old the car will be at the end of the agreement, and *how many miles it is expected to have covered* (my emphasis).

Importantly it explains how the lender, in this case LRFS, uses the estimated annual mileage to calculate the market value of the car (the GMFV) at the end of the agreement. This is also set out in the agreement. Term A4 of the agreement Mr O entered into includes the statement: “...*the higher the mileage, the less the vehicle is worth*”.

So, it is important for consumers like Mr O to be realistic with their estimate of how many miles they expect to cover each year as this will help determine the GMFV, and the monthly payments.

Using the LRFS finance calculator for an example, a PCP with 12,000 miles annual mileage would generate a monthly payment of £537, whereas the monthly payment for a PCP with 8,000 miles would be £514 (both examples are based on a cash price of £43,445, and all other factors are identical).

So it's clear to me that by having a lower mileage allowance Mr O benefitted from reduced monthly payments. And as he exceeded that mileage, I think it's fair and reasonable that, as set out in the agreement, he pays for that excess mileage.

I also think it's reasonable that we rely on the terms of the agreement to calculate the charge for excess miles. Term A4 of the agreement states: “*If you breach this term you will be liable to pay us an excess mileage charge of 14.0 pence plus VAT per excess mile.*”

LRFS say that a charge of 45p per excess mile is reasonable. They say that the 14p per mile in the agreement does not apply when the consumer returns the car because it wasn't of satisfactory quality. I disagree.

Mr O has already paid for his usage in his monthly payments. But he exceeded the mileage allowance, and the monthly payment was based on that mileage allowance. Under the terms of a PCP, the value is affected by the miles done, and as Mr O exceeded the agreed miles, that agreement says a payment of 14pence per mile is necessary to cancel out the impact of the likely reduced value of the car from the increased mileage.

I note that this is also the method set out in term A10 of the agreement should consumers exercised their rights to terminate the agreement early.

So I'm satisfied that in this case the redress should be based on the terms of the agreement, that is, 14pence per excess mile.

Putting things right

Mr O has been able to use the car while it's been in his possession. And while it was being repaired, he was also provided with a courtesy car to keep him mobile. Because of this, I think it's only fair that he pays for this usage.

It's not in dispute that Mr O travelled 9,006 miles in the four month period he had use of the car. And there's no dispute that the hire purchase agreement had a mileage allowance of 24,500 miles over the 49 month period of the agreement. That equates to about 500 miles every month.

In the short time he was able to use the car, Mr O averaged more than 2,000 miles a month. That is significantly more than he had agreed to do when he entered into the agreement. Mr O felt it wasn't fair to assume he would've exceeded the allowance over the longer period.

As I've explained above, entering into an agreement with a lower mileage allowance reduces the monthly payments. Mr O travelled significantly more miles than what was agreed when he entered into the agreement. So I'm satisfied that he pays for that extra usage, and that it's reasonable to use an average monthly calculation.

Mr O exceeded the mileage allowance by 7,006 miles. So I think the charge for fair usage should be $7,006 \times 14$ pence per mile plus VAT, and four monthly payments. That should be rounded down to £3,735.

Distress & Inconvenience

It's clear that Mr O was inconvenienced by having to arrange for the car to be repaired, requiring him to make several visits to the garage. Mr O would not have to do some of these, had LRFS supplied him with a car that was of a satisfactory quality. So, I think LRFS should pay him £250 in compensation they have already offered to reflect the distress and inconvenience caused, unless they have already done so.

Therefore, LRFS should:

- end the agreement with nothing more to pay;
- collect the car at no cost to Mr O;
- remove any adverse entries relating to this agreement from Mr O's credit file;
- refund the £6,250 deposit Mr O paid (if any part of this deposit is made up of funds paid through a dealer contribution, LRFS is entitled to retain that proportion of the deposit);
- LRFS to calculate total amount Mr O has paid in total, and deduct £3,735 for fair usage and refund the difference,
- apply 8% simple yearly interest on the refunds, calculated from the date Mr O made the payment to the date of the refund[†]; and

[†]If LRFS considers that tax should be deducted from the interest element of my award, they should provide Mr O with a certificate showing how much they have taken off so he can reclaim that amount, if he is eligible to do so.

My final decision

For the reasons explained, I uphold Mr O's complaint about Black Horse Limited trading as Land Rover Financial Services and they are to follow my directions above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 November 2024.

Gordon Ramsay
Ombudsman